

Sociology 4099: Victimology

Prof. J.S. Kenney

Overheads Week 7:

Victims and Criminal Justice 2: Official Responses

This week we will look at the four most significant responses to the victim's traditional role in the criminal justice process:

- (1) The Civil Courts
- (2) Criminal Injuries Compensation
- (3) Victim's Services Programs
- (4) Restorative Justice

(1) The Civil Courts:

*This involves civil lawsuits against the offender where:

- Defendant's act was wrongful
- S/he owed a duty to plaintiff
- Damages were reasonably foreseeable

* Burden of proof = "balance of probabilities"

* Many problems with lawsuits:

- Inability to identify/locate offender
- Limitation periods
- Offender having no assets
- Legal costs
- Counterclaims
- Other prior claims (e.g. criminal fines)

* Studies show few victims sue; even fewer recover:

- Linden (1968): 4.8% sued but 1.8% of victims collected
- Delta/Vancouver (1974): 4% collected
- General Social Survey (1988): Only 1% tried to collect

(2) Criminal Injuries Compensation:

- * Grew out of dissatisfaction with civil courts
- * Politically justified as:
 - “Natural justice”
 - Contribution to public welfare
 - A form of insurance
- * Began in New Zealand (1963) and spread rapidly
- * Until 1992, federal-provincial cost-sharing, but provincially run
- * Common features of programs:
 - Aids victims of violent crime
 - Compensates “Good Samaritans”
 - Consider contributory behavior of victim
 - Designed to compensate financial loss
 - Some programs cover “pain and suffering”
- * Problems from a victim’s perspective:
 - Low awards compared to lawsuit
 - Limitation periods
 - Maximum award limits
 - Deducting collateral benefits
 - Do not cover property loss/ damage
 - Increasingly fails to cover pain and suffering
 - Long delays/ bureaucracy

- Underfunding of programs
- Programs not well-known
- Compensation denied for many reasons
- Upsetting hearings

* Robert Elias (1983):

- Programs an example of “symbolic politics”
- Initial legislative supporters voted against funding programs
- Act as a form of welfare/ appeasement

* Elias’ Survey:

- Fewer than 1% of violent crime victims applied
- Fewer than 35% of applicants were compensated
- No impact on crime rate
- Those involved had worse experience than those who were not

* Ultimately:

- A “band aid” solution after the fact
- Does not deal with root causes of problems
- Does not provide “real” assistance to victims

(3) Victim’s Services Programs:

* Massive growth in victim service programs since 1970's

* 1997 report found 4 basic types of programs:

- (1) Police based services
- (2) Crown/court based victim-witness services
- (3) Community based services
- (4) System based services

* Marriott-Thorne (1998) divides available services into:

- (1) Services available to all victims (Provincial/ Police Victims Services)
- (2) Services to victims of family violence (public and private)
- (3) Specialized services (MADD, sexual assault services)
- (4) Mandated non-justice services (adult/child protection)

* Funded through:

- Victim fine surcharges
- Grants
- Private fundraising

* Provincial Victims Services (Provincial Departments of Justice):

- Provides services to victims after charges laid/ court process begins
- Victim Services Officers responsible for:

- Court preparation sessions
- Child Victim Witness Program
- Criminal Injuries Compensation
- Victim Impact Statements
- Providing emotional support
- Providing information
- Liaison with prosecutors, counselors, other services

* Provincial Victim's Services evaluated by Collins and Martel (1996)

- Largely supportive
- Suggests administrative changes
- Focuses on improving efficiency of current program

* My own research:

- Focused on encouragement vs. discouragement of victim role/identity
- Surveyed 44 clients and 22 support staff

Findings:

* Official attempts to avoid encouraging victim identity:

- On one hand, extensive training/ avoiding term victim/ giving options
- Present as “short term problem” /attempt to “normalize”/ build up
- “Knowledge is power”
- Some clients appreciate/ others feel belittles their situation

* Approach inconsistently/ incompletely implemented:

- Denying labelling, and then doing it
- Providing info on cycle of abuse

* Program’s close ties to CJS:

- Built around/unable to criticize traditional CJS
- Staff have no more power than victim: “hands tied”
- Criticized as “part of the system” (e.g. impact statement restrictions)
- All about what happens in court
- Perceived as protecting their jobs
- Encourages sense of victim’s powerlessness

* Responses by Staff:

- Blamed legislation
- Focused on brevity of encounters/ claim minimized impact
- Claim clients already saw selves as victims/ no more harm done

* Ultimately, tension between attempts to avoid, and inculcation of victim identity

* Much official concern with protecting program itself

(4) Restorative Justice:

* Restorative justice (i.e. “working things out”) is widely touted as an alternative to traditional, retributive justice system

* History:

- Widely used in many (but not all) Aboriginal cultures
- Christie (1977) conflicts stolen from legitimate owners
- Mennonite Church initiated victim offender reconciliation (VORP)
- Increasingly popular among academics as a CJS alternative

* Dittenhoffer and Ericson (1983): Victim-Offender Reconciliation Program

- VORP program showed lack of interest in reconciliation
- Emphasized financial compensation by offender
- CJS officials chose “shallow end” cases/ wouldn’t have been jailed
- Not an alternative to incarceration
- “Widens net” of CJS/ increased cost

* Mark Umbrecht (1994):

- Preliminary study emphasizing use of VORP for violent crime
- Enables victims to answer questions/ obtain closure
- Cautions against pushing victims into such programs
- Emphasizes need for additional services/ resources in such cases

* International Studies:

- Contrast between Britain (low victim involvement 7%) and other jurisdictions (New Zealand 46%; Australia 73%)
- Masters (2002): problem lies in “poor practice” including:

- (1) Victims not contacted
- (2) Poor scheduling
- (3) Poor staffing, training, agency cooperation, & high caseloads

* Newfoundland & Labrador: 3 programs:

- (1) Community Mediation Services (volunteer mediation/minor disputes)
- (2) John Howard Society (peer mediation program for youth)
- (3) Circles of Support (post-conviction reintegration of violent/sex offenders)

* Some plans are in the works to expand RJ either through the Dept. Of Justice or NFLD Victims' Services

* Nova Scotia Program (1998 to present):

- Much broader than VORP (e.g. wider array of conference options)
- Four entry points (police, Crown, Judge, Corrections)
- Includes violent crimes, but restricts entry points)
- Expects much community/ agency involvement
- Began with Young Offenders, eventually including adults

* My research with Don Clairmont: comprehensive evaluation of N.S. implementation over 4 years

* One aspect: 15 interviews of community groups/ CJS officials (11 vs. 4)

* Possible risks/ benefits to victims:

- Most responses to question from victim organizations
- Concerns: Re-victimization
 - No veto/power in process
 - Serious/violent offences included
 - RJ being used in lieu of charges
 - Few supports in place
 - Victim's expectations
- CJS respondents: depending on preparations and expectations, catharsis, understanding and closure possible

* Possible risks/ benefits to offenders:

- Avoiding incarceration (a good or bad thing, depends on viewpoint)
- Holding offenders accountable in better fashion
- CJS respondents: same themes, but concern over waiving offender's rights

* Possible risks/benefits to communities:

- "Cost effectiveness" vs. "downloading" w/o resources
- Need for education
- Impact on crime statistics
- Issue of community control
- CJS respondents: beneficial, but need properly informed decisions

* Effectiveness of RJ:

- Most qualified responses on basis of prior concerns/ wait and see
- CJS respondents more positive/ worth a shot

* Efficiency of RJ:

- Not likely: a government program dealing with human emotions
- If done right, will be expensive
- Clearing up vs. increasing court docket
- Efficient for who?

* Equity of RJ:

- Broke down on victim vs. offender lines
- CJS respondents: did not favor victim veto

* Ultimately:

- Sharp differences depending on agency perspective
- CJS respondents take more systemic approach

* Don Clairmont: Two Year Interim Report:

- Only 11% of victims attended RJ sessions (poor practice?)
- Cases referred predominantly first time/ less serious offences
- While rating experience favorably, victim's views may change once more serious cases included

* In conclusion:

- Many problems in prior research appear
- More research needed/ will proceed